

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-06-SE-328
Hare Planting Co., Inc.	)	NAL/Acct. No. 200732100003
Newport, Arkansas	)	FRN No. 00014329353
	)	

**FORFEITURE ORDER**

**Adopted: April 23, 2007****Released: April 25, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of five thousand two hundred dollars (\$5,200) against Hare Planting Co., Inc. ("Hare Planting") for willful and repeated violations of Section 301 of the Communications Act of 1934 ("Act"), as amended,<sup>1</sup> and Sections 1.903(a) and 1.949(a) of the Commission's Rules ("Rules").<sup>2</sup> The noted violations involve operating a Private Land Mobile Radio Service ("PLMRS") station without Commission authority and failing to file a timely renewal application for the station.

**II. BACKGROUND**

2. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization. Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, "no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration." Absent a timely filed renewal application, a wireless radio station license automatically terminates on the specified expiration date.<sup>3</sup> In response to a letter of inquiry from the Enforcement Bureau's Spectrum Enforcement Division ("Division"),<sup>4</sup> Hare Planting admitted that it continued to operate the PLMRS station, WNQC202, after the license expired on August 14, 2004 and until a Special Temporary Authority was granted on December 1, 2005.<sup>5</sup>

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. §§ 1.903(a) and 1.949(a).

<sup>3</sup> 47 C.F.R. § 1.955(a)(1).

<sup>4</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Marvin B. Hare, Jr., President, Hare Planting Co., Inc. (September 13, 2006).

<sup>5</sup> See Letter from Marvin B. Hare, Jr., Hare Planting Co., Inc. to Jacqueline Johnson, Spectrum Enforcement Division, Enforcement Bureau (September 21, 2006).

3. On November 22, 2006, the Division released a *Notice of Apparent Liability for Forfeiture* (“NAL”)<sup>6</sup> finding that Hare Planting operated PLMRS station WNQC202 without Commission authority after its expiration on August 14, 2004 and failed to file a timely renewal application for the station by the date of expiration. The NAL proposed a \$5,200 forfeiture based on Hare Planting’s apparent willful and repeated violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.

4. In its December 26, 2006 response<sup>7</sup> to the NAL, Hare Planting seeks to cancel or reduce the forfeiture amount, claiming that its failure to renew its license was “due to ignorance,” and was “an oversight,” and “not a premeditated act.” Hare Planting also states that “[f]ifty-two hundred dollars is a lot of money to us.”

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>8</sup> Section 1.80 of the Rules,<sup>9</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>10</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>11</sup>

6. We have considered Hare Planting’s response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Hare Planting willfully and repeatedly violated Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules and that no mitigating circumstances warrant further reduction of the proposed forfeiture amount. Specifically, Hare Planting, in its response to our NAL, admits to committing the acts leading to the violations, asserting that such acts were due to an inadvertent oversight that its license had expired.<sup>12</sup> The Commission has held that inadvertent error does not nullify or mitigate violations of the Act or the Rules.<sup>13</sup> Further, although Hare Planting states that “[f]ifty-two hundred dollars is a lot of money to us,”<sup>14</sup> this statement alone is not

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<sup>6</sup> *Hare Planting Co., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13517(Enf. Bur., Spectrum Enf. Div., 2006).

<sup>7</sup> See Letter from Marvin Hare, Jr. to Office of the Secretary, Federal Communications Commission (December 26, 2006) (“NAL Response”).

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. § 1.80.

<sup>10</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>11</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>12</sup> NAL Response at 1.

<sup>13</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“stating that inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”).

<sup>14</sup> NAL Response at 1.

sufficient to demonstrate an inability to pay.<sup>15</sup> Hare Planting has provided no specific financial information or evidence of financial hardship and, therefore, we are unable to determine whether a reduction based on inability to pay is warranted in this instance.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>16</sup>, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>17</sup> Hare Planting, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand two hundred dollars (\$5,200) for violation of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>18</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, SW, Room 1-A625, Washington, D.C. 20554.<sup>19</sup>

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Marvin B. Hare, Jr., President, Hare Planting Co., Inc. at 2600 Highway 17 South, Newport, Arkansas 72112.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>15</sup> The *NAL* sets forth the Commission's requirements and the financial documentation to be submitted when a petitioner seeks reduction or cancellation of forfeiture based on a claim of inability to pay. *See* 21 FCC Rcd at 13521.

<sup>16</sup> 47 U.S.C. § 503(b).

<sup>17</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>18</sup> 47 U.S.C. § 504(a).

<sup>19</sup> *See* 47 C.F.R. § 1.1914.